No. 28

IN THE

Supreme Court of the United States

October Term, 1938

DAN B. SHIELDS, INDIVIDUALLY AND AS UNITED STATES ATTORNEY FOR THE DISTRICT OF UTAH, AND INTERSTATE COMMERCE COMMISSION,
Petitioners,

vs.

THE UTAH-IDAHO CENTRAL RAILROAD COMPANY, A CORPORATION, *Respondent.*

On Writ of Certiorari to the United States Circuit Court of Appeals For the Tenth Circuit.

Brief of American Transit Association as Amicus Curiae

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I

INTEREST OF AMERICAN TRANSIT ASSOCIATION

The American Transit Association is a voluntary, nation-wide organization comprising in its membership the

major portion of all independently operated electric railway mileage in the United States, motor carriers, manufacturers of apparatus used by such transportation agencies, and other classes of members, such as associate, individual, etc.

Among its member companies there are thirty-six independently operated electric railways, located throughout the United States, engaged in interstate commerce and commonly known as interurban electric railways. Appendix "A" hereof contains a list of the aforesaid thirty-six electric railways, showing their respective locations.

Since their inception these electric railways have been generally known and have considered themselves interurban electric railways under both Federal and State laws and many of them have been heretofore judicially and administratively determined to be interurban electric railways.

In addition to the multiplicity of State statutes and State administrative board rulings with regard to interurban electric railways there are 18 sections of different Federal statutes in which interurban electric railways are specifically mentioned or are exempted. The pertinent parts of these statutes are shown as Appendix "B" hereof.

For the convenience and information of the Court there is also set out as Appendix "C" hereof a number of State statutes which are cited to illustrate State laws in which interurban electric railways are specifically mentioned.

Until recent years there has been practically no controversy over the meaning of the term "interurban electric railway" as used in Federal and State statutes. The status of these independently operated electric railways as interurban electric railways, prior to the recent findings of the Interstate Commerce Commission in this and other cases under the Railway Labor Act, was generally recognized and well-settled. The findings of the Commission, however,

in this and other cases under the Railway Labor Act, have caused great confusion and uncertainty as to the status of these carriers under the multiplicity of statutes affecting them, and the decision of this Court in this case, therefore, is of great importance to these carriers.

II

STATEMENT OF THE CASE

The brief of the respondent will contain a comprehensive statement of the case. The undisputed facts briefly summarized are as follows:

Respondent's railway operates between Ogden, Utah, and Preston, Idaho, a distance of approximately ninety-five miles. Between its termini it runs through a number of cities and towns, on public streets and highways under municipal franchises which contain many restrictions, such as the prohibition of the use of steam locomotives as motive power and the specification of the sizes of trains, street stops, speed regulations, observance of "stop" and "go" traffic signals, and the occupancy of the streets in common with vehicular traffic. Eighteen per cent of respondent's line is on public highways or city streets. It operates over heavy grades and around many short curves and its passenger trains are usually one-car trains. Its freight trains are limited to a maximum of twelve cars and that length train may only be pulled on a short section of respondent's line. On other sections of its line but five cars may be moved in one train. Its electric power supply is integrated with its train operation and provides power sufficient only for short and frequent train movements. Its locomotives are light in weight and its track construction is usually of 70 pound or lighter steel on ties smaller than steam railroad standard. Its spur and passing tracks are

short, commensurate with the size of its trains. Its passenger cars stop in the country at highway grade crossings and at street corners on the city streets, its stops averaging one for every mile and a half of line. In cities and towns its trains stop in the middle of the street and its stations are located on the side of the street, so that passengers must cross through vehicular traffic to reach its cars.

The respondent's predecessor, Ogden Rapid Transit Company, started as a street-car system in Ogden, Utah, in 1890. This predecessor company was extended from time to time along the country roads to other cities and towns north of Ogden. Later additional line was built connecting with the Ogden Rapid Transit Company until the respondent's present physical property was completed in or about the year 1915.

In the year 1926 respondent's property was reorganized out of receivership and 20,000 shares of common stock and two million dollars of first mortgage bonds were issued by respondent without approval of the Interstate Commerce Commission as required by Section 20a of the Interstate Commerce Act if respondent is not an interurban electric railway. These securities were issued by respondent without the approval of that Commission because respondent believed and considered itself exempted as an interurban electric railway from Section 20a. The Interstate Commerce Commission not only had knowledge of this transaction, but, in a series of letters addressed to respondent, directed the accounting procedure that should be followed in setting up the transaction on respondent's books. No objection to the issuance of the securities without Commission approval was ever made by the Commission, although Section 20a makes securities issued by railroads subject to its provisions void unless prior approval has first

been obtained from the Commission, and provides drastic penalties for its violation.

In 1935 the gross revenue of the respondent was $514,000; the average annual gross revenue over a period of 20 years was $697,000 per year; the average annual operating revenue during that period from passenger traffic was $217,000. The passenger revenue in 1935 was $64,000; the average annual freight revenue during the 20 year period was $404,000. In 1935 the freight revenue was $403,000. During the entire period of twenty years there has been no substantial change in the type of freight operation or the revenue produced by it, whereas the passenger revenue in 1935 was $153,000 less than the annual average for the 20 year period. The reduction in passenger revenue has been due to the increased use of automobiles and buses.

The respondent interchanges car-load freight with electric and steam railroads and maintains joint rates with such railroads.

This case arose on a suit instituted by the respondent in the United States District Court for the District of Utah, to enjoin the petitioner, Shields, individually and as United States Attorney for the District of Utah, from enforcing the provisions of the Railway Labor Act against respondent.

Section 1, First of the Railway Labor Act, reads as follows:

> "The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in

connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': *Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

Under the provisions of Section First of the Railway Labor Act, the Mediation Board requested the Interstate Commerce Commission to determine the status of respondent. A hearing was held and on March 18, 1936, the Commission found that respondent is not an interurban electric railway. Railway Labor Act Docket No. 12—*Utah Idaho Central Railroad Company,* 214 I. C. C. 707. Thereupon, a demand was made upon respondent for compliance with the Railway Labor Act and prosecution was threatened under Section 2, Tenth, which reads as follows:

"The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six

months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided,* That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

The Federal District Court granted the injunction sought by respondent and found the respondent to be an interurban electric railway which is not operating as a part of a general steam railroad system of transportation. Petitioner appealed from that decree to the United States Circuit Court of Appeals, Tenth Circuit. That court sustained the decree of the lower court (95 Fed. (2d) 911). The case is here on certiorari.

III

UNLAWFUL STANDARDS WERE USED BY THE INTERSTATE COMMERCE COMMISSION IN DETERMINING THAT RESPONDENT IS NOT AN INTERURBAN ELECTRIC RAILWAY.

Although, as shown by the pleadings, it is the position of the respondent that the courts below had the authority to decide the question involved *de novo* and without regard to the decision of the Interstate Commerce Commission, it is felt that a brief discussion of the fallacious grounds on which the Commission has based its findings under the Railway Labor Act in this and other proceedings is appropriate, because it will demonstrate beyond doubt that the Commission has misconstrued the statute and that the courts below have correctly construed it.

In concluding that the respondent is not on interurban electric railway under the Railway Labor Act, the Commission made the following findings:

> "* * * We are of the opinion that an electric railway which is engaged in the general transportation of freight, whether the revenue therefrom is greater or less than its passenger revenue, which handles the bulk of such freight in standard equipment similar to that used by the steam railroads, which freely interchanges the same with the steam railroads for transportation to or from points on their lines, a considerable portion thereof being handled in interstate or foreign commerce, and which participates in joint rates with the steam railroads for interstate transportation, has more of the characteristics of a commercial railroad operated by electric power than of an interurban as that term is used in the exemption provision under consideration."

An analysis of these factors laid down by the Commission as characteristics which remove an electric railway from the interurban class shows indisputably that the Commission has disregarded specific provisions of the Acts of Congress descriptive of interurban railways, the common understanding of the characteristics of interurban railways, as evidenced by State and Federal statutes, State administrative board decisions and State and Federal Court decisions as well as a long line of the Commission's own decisions, and has arbitrarily and capriciously adopted its own legislative recommendations to Congress which it repeatedly and continuously urged but which Congress has failed to accept.

(a) The first standard used by the Commission in its findings in this case is that "an electric railway which is engaged in the general transportation of freight" is not an interurban electric railway. This standard is unlawful, arbitrary and capricious because Congress has repeatedly enacted laws which recognize that an interurban electric railway may be "engaged in the general transportation of freight." Section 15(3) of the Interstate Commerce Act, enacted in 1910, provides:

> "The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character;"

Section 1 of the Federal Control Act, approved in March, 1918, provides:

> "*Provided, however,* that nothing in this paragraph shall be construed as including any street or interur-

> ban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic, or sale of power, heat and light, or both."

Sections 204 and 209 of the Transportation Act, 1920, contain almost identically the same language as Section 1 of the Federal Control Act.

Section 15a of the Interstate Commerce Act, before it was repealed in June, 1933, provided:

> "* * *; the term 'carrier' means a carrier by railroad * * *, excluding * * *, (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation *or engaged in the general transportation of freight* * * *." (Italics ours.)

Section 77(r) of the Bankruptcy Act, approved in March, 1933, and paragraph (m) which superseded paragraph (r) in August, 1935, reads as follows:

> "The term 'railroad corporation' * * * means any common carrier by railroad * * *, except a street, a suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment."

That the Commission well understood that Federal law recognized the fact that an interurban electric railway might be "engaged in the general transportation of freight" is best evidenced by reference to many of its own decisions handed down prior to 1927. In the following cases, decided by the Commission from the year 1907 to 1915 in-

clusive, the Commission specifically recognized that interurban electric railways were transporting freight extensively, and, furthermore, that the Commission had jurisdiction to require the steam railroads to participate in the establishment of through routes and joint rates with such electric lines. *Chicago and Milwaukee Electric Railroad Company* v. *I. C. R. Co.*, 13 I. C. C. 20; *Cedar Rapias & Iowa City Railway and Light Company* v. *Chicago & Northwestern Railway Co.*, 13 I. C. C. 250; *West End Improvement Club* v. *Omaha & Council Bluffs Railway and Bridge Co., et al.*, 17 I. C. C. 239; *Cincinnati & Columbus Traction Co.* v. *B. & O. Southwestern R. R., et al.*, 20 I. C. C. 486; *St. Louis, Springfield & Peoria R. R., et al.*, v. *P. & P. U. Railway Co.*, 26 I. C. C. 226; *Louisville Board of Trade, et al.*, v. *Indianapolis, Columbus & Southern Traction Co., et al.*, 27 I. C. C. 499; *Chicago, Ottawa & Peoria Ry.* v. *C. & N. W. Ry. Co., et al.*, 33 I. C. C. 573.

In these decisions the transportation of freight by interurban electric railways was specifically recognized. This was in accordance with the common understanding of the functions of an interurban electric railway and was in harmony with the recognition of freight transportation on interurban electric railways which was given to that fact by the Bureau of Census of the United States Government as far back as 1902. In the Bureau of Census Report entitled "Street and Electric Railways, 1902", interurban electric railways were described as frequently being heavy freight carrying railroads, and, again, in the Bureau of Census Report in 1907 it was remarked that the increase in income from freight business transported over interurban lines between 1902 and 1907 was over 400 per cent. The Bureau of Census Report in the year 1912 set out that interurban electric railways owned and used nearly 8,000 freight, express and baggage cars, operated 277 elec-

tric locomotives, and derived more than ten millions of dollars in revenue from the transportation of freight.

A few illustrations of the extent of the Commission's decisions recognizing the transportation of freight by interurban electric railways serve to emphasize the fact that the Commission well understood the freight carrying characteristics of interurban lines. In February, 1913, the Commission designated a group of electric lines as "interurban electric railways working under a common management with other electric lines, all known as the Illinois Traction system." The decision in that case contained the following description of the lines which the Commission designated "interurban electric railways":

> "The complainants conduct a general passenger and freight business, and their lines are standard gauge with rails and ballast of regular steam-road standard. Their traffic manager testified that they own 900 cars, of which approximately 125 are passenger and motor cars and 775 are freight cars. The freight cars are of 80,000 pounds capacity each, were constructed in accordance with master car builders' rules, and are equipped with safety appliances required by law and rules of the Commission." (*St. Louis, Springfield & Peoria Railroad, et al.* v. *P. & P. U. Railway Co.*, 26 I. C. C. 226.)

Another Commission decision emphasizing the fact that interurban electric railways were engaged in the "general transportation of freight" was made in November, 1922, in *Michigan R. R. Co.* v. *Pere Marquette R. R. Co., et al.*, 74 I. C. C. 496. The following language is found in that decision:

> "Complainant, a railroad corporation, operates electric interurban lines wholly within the State of Michi-

gan * * *. (The lines) are of standard railroad construction, laid with 80 pound rails, and ballasted throughout, and traverse private rights of way except through the municipalities of Grandeville, Holland, and Kalamazoo. Complainant is a member of the American Railway Association, The Master Car Builders' Association, the Bureau for the Safe Transportation of Explosives, the Per Diem Association, the Freight Claim Association and the American Short Line Railroad Association. It makes monthly and annual reports to this Commission and complies with our accounting requirements. Its freight motive power consists of 11 electric locomotives of an average horsepower of 540 each. It owns and operates 19 box cars of 60,000 pounds capacity, interchangeable with steam lines * * *. Its lines have physical track connection for interchange of freight with the lines of steam railroads * * *. Its freight revenue for the first eleven months of 1920 was $448,511, about 24 per cent of its total revenue. * * *"

In the year 1924, in *"Application of Section 15a of the Interstate Commerce Act to Electric Railways,"* 86 I. C. C. 751, an illuminating discussion by the Commission of the subject of interurban electric railways and the business that they transact will be found. Without laboring the matter, the following language is quoted from the decision:

> "Considering the responsibilities as well as the benefits of carriers under Section 15a, it seems clear that Congress intended to exclude interurban electric railways generally from its operation, and to include them only when engaged in such general transportation of freight as would cause them to resemble steam roads in the performance of that function."

The excluding language in section 15a, unlike the excluding language in other sections of the Interstate Commerce

Act and other Federal statutes, includes an interurban electric railway if it is engaged in the general transportation of freight. That section demonstrates beyond doubt that, as no similar language is used in the Railway Labor Act or in other Federal acts, it is erroneous for the Commission to hold, in construing the Railway Labor Act, that it also includes an interurban electric railroad if engaged in the general transportation of freight. The well known doctrine of exclusion repels any such construction. It will thus be seen that the first standard used by the Commission in its findings in the instant case to the effect that an interurban electric railway ceases to be such, if it engages in the general transportation of freight, is arbitrary, capricious and unlawful.

(b) The second standard used by the Commission in its findings in this case is " * * * which handles the bulk of such freight in standard equipment similar to that used by the steam railroads." Such standard used by the Commission as one of the functions which removes an electric railway from the interurban class is unlawful. Section 77 (r) and (m) of the Bankruptcy Act as amended, specifically states that an interurban electric railway may derive more than fifty percentum of its operating revenues from the transportation of freight in standard steam railroad freight equipment. Moreover, as recent as June, 1938, the Commission itself, in 228 I. C. C. 267 described the Bamberger Electric Railroad as follows:

> "The debtor's 36 miles of line is an interurban electric railroad between Ogden and Salt Lake City, Utah, and is located wholly within the State of Utah. It derives more than 50 per cent of its operating revenues from the transportation of freight in standard freight equipment."

(c) The third standard used by the Commission in its findings in this case is "* * * which freely interchanges the same (standard equipment) with the steam railroads for transportation to or from points on their lines, a considerable portion thereof being handled in interstate or foreign commerce." All interurban electric railways engaged in interstate commerce are subject to the Interstate Commerce Act and the jurisdiction of the Commission, except where exempted. *U. S.* v. *Village of Hubbard, Ohio,* 266 U. S. 474.

Paragraph 4 of Section 1 of the Interstate Commerce Act, (Part I) provides:

> "It shall be the duty of every common carrier subject to this part engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable requests therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes * * *".

Paragraph (3) of Section 3 of the Interstate Commerce Act, (Part I) provides:

> "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this part, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines * * *."

The law, therefore, requires free interchange of business between interurban electric railways and steam railroads, and, moreover, Section 77 of the Bankruptcy Act, and the Commission's decision in the *Bamberger Electric Railroad*

Company Case, show that this part of the standard adopted by the Commission in determining the status of the respondent in this case is unwarranted and unlawful. Furthermore, in *U. S.* v. *Chicago, North Shore & Milwaukee Railroad Co.,* 288 U. S. 1, this Court stated that the North Shore handled 87 per cent of its car-load freight traffic in interchange with other railroads and that 78 per cent of all its freight traffic was inter-line, and this Court held the North Shore to be an interurban electric railway. It surely cannot be said that an interurban electric railway forfeits its character as such, because it complies with the duties imposed by law on that class of carriers, to establish through routes, joint rates and interchange facilities for the handling of freight and passenger traffic.

(d) The fourth standard used by the Commission in its findings in this case is "* * * and participates in joint rates with the steam railroads for interstate transportation." In the *Chicago, North Shore & Milwaukee Railroad Case,* this Court found that the North Shore had in effect 206 tariffs in which it participated in joint rates as an initial carrier and more than 800 in which it participated as delivering or intermediate carrier in conjunction with steam railroads, and the Court found the North Shore to be an interurban electric railway.

Sections 1 and 3 of the Interstate Commerce Act set out the law with regard to the interchange of business between interurban electric railways and steam railroads. Such interchange of business cannot be conducted without through routes and rates. This part of the Commission's standard is also unlawful, and is expressly contrary to many Commission decisions, wherein joint rates on freight traffic were prescribed by the Commission for use between interurban electric railways and steam railroads.

For example, in March, 1915, the Commission, in its ecision in *Chicago, Ottawa & Peoria Ry. Co.* v. *Chicago & Northwestern Railway Co., et al.*, 33 I. C. C. 573, at page 75, uses the following language:

> "Our authority upon a proper showing to require the establishment by steam railroads of through routes and joint rates with interurban electric railroads engaged in the interstate transportation of freight has long been settled." (citing cases.)

In July, 1918, Congress enacted the Electric Railway Iail Pay Act which authorized the Commission to fix rates f mail pay for service on "urban and interurban electric ailways." In the *Electric Railway Mail Pay Case*, 58 C. C. 455, the Commission said, among other things:

> "Interurban lines, as the term implies, run between two or more cities. They are operated in some respects like the steam roads so far as mail transportation is concerned. Many of them do considerable freight and express business, in addition to their passenger business. * * * A few lines receive greater revenue from freight and express than from passenger business."

Later, in the second *Electric Railway Mail Pay Case*, 98 C. C. 737, the Commission said:

> "Mail service is now authorized on the lines of 311 urban and interurban electric railway companies."

Although, in the second *Electric Railway Mail Pay Case* ne Commission prescribed rates of mail pay as to urban nd interurban electric railroads, many of which then parcipated in joint freight rates with steam railroads and

interchanged carload freight in standard steam railroad equipment, the Commission has since found some of these very carriers not to be interurban electric railroads under the Railway Labor Act, because they do participate in joint freight rates and interchange freight with steam railroads in standard steam railroad equipment.

The foregoing analysis and discussion of the standards used by the Commission in its determination of the status of respondent under the Railway Labor Act establish that the Commission's findings are grounded upon unlawful tests. The lawful standards for the determination of an interurban electric railway are the physical and operating characteristics of such a railway as established by early authentic history, general usage and common understanding of the term, State and Federal statutes and administrative construction. These matters will be dealt with in the next section of this brief.

IV

CHARACTERISTICS OF AN INTERURBAN ELECTRIC RAILWAY

Interurban electric railways began to develop a year or so before the turn of the present century—about the year 1898 or 1899. By the year 1902 interurban electric railways were so well established and their physical and operating characteristics so well defined that the United States Government, Bureau of Census, in its official report for that year, published by authority of an act of Congress, under the heading "Street and Electric Railways, 1902" used the following language:

> "The electric interurban railways possess, in contrast with steam railroads, several peculiar characteristics which directly affect their method of operation

* * *. Small units and frequent service. Steam operation tends to infrequent service, while electric operation lends itself to frequent service. Frequency of stops. The fact that single units of comparatively light weight are operated permits stops to be made much more quickly than with heavy steam trains, and, likewise, permits a much more rapid acceleration after the start. Operation in the streets of towns and cities. By running upon the public streets when they enter a city or town and by making frequent stops within the municipal limits electric railways become usually much more accessible to passengers than steam railroads * * *. Other peculiarities of interurban railway service, * * *. One of these is the fact that the electric car can surmount grades and pass curves more readily than a steam train."

Again in the same Census Report for the year 1902 the lowing language appears, which emphasizes the fact that erurban electric railways were well constructed, partly private rights of way, and transported a substantial lume of freight:

"In the Central West at least 75 per cent of the interurban roads are located on private rights of way from 30 to 40 feet wide for single track on which a standard road bed is laid with 70 to 80 pound rails. As a general thing, the electric roads have been less careful than the steam roads to avoid grades and curves. The bridge construction along such roads, however, is very often of a superior character, consisting of steel girder construction and comparing favorably with steam railway practices. The most extensive development of freight and express business has taken place on the interurban lines. Many of the cars on these roads are ordinary freight cars with brake equipment, etc., similar to that on steam railways."

Thus in the year 1902 a Department of the United States Government recognized and officially reported the peculiar characteristics of interurban electric railways. These characteristics—"small units and frequent service, frequent stops, operating in the streets of towns and cities, heavy grades and short curves," are still the outstanding characteristics of interurban electric railways. They have been constantly recognized in State and Federal statutes—in court decisions and in the decisions of the Interstate Commerce Commission itself as cited in numerous instances.

In the year 1907 the Bureau of Census issued another official report with regard to electric railways and in it refers to such railways in the following language:

> "Of the total increase in track during the five year period which amounted to 11,826.57 miles, 60.6% was on private rights of way. The development of freight and express traffic on interurban and rural lines has resulted in a large increase in cars especially equipped for this service. * * * By the extent of their operations (interurban electric railways) rival main lines of steam railroad. The *variety of freight and express carried is remarkable and includes all kinds of commodities and merchandise.*" (Italics ours.).

Without laboring the subject unduly it may be further stated that the Bureau of Census issued another report in the year 1912 which again emphasized the growth of the industry and the freight development, all of which merely confirms the original recognition of the characteristics of interurban electric railways as set out in the Census Report for the year 1902.

In an early California case, *San Francisco Electric Railway Co.* v. *Scott*, 142 Cal. 222, the Court used this language:

"There has recently come into existence a certain class of railroad known as 'interurban roads' which are a sort of hybrid, having in some respects the characteristics of the ordinary railroad and in others those of the street railroads. Within the limits of the cities which they enter they usually pass along the streets and perform the ordinary functions of street railroads, stopping where desired, to let passengers on or off, and serving the public need for local street travel. * * * They also convey freight as well as passengers."

This Court, in June, 1913, recognized interurban railroads in *Omaha & Council Bluffs Street Railway Co.* v. *Interstate Commerce Commission,* 230 U. S. 324, and stated that a new type of interurban railroad had been developed

"which, with electricity as a motive power, uses larger cars, and runs through the country from town to town, enabling the carrier to haul passengers, freight, express, and the mail for long distances at high speed."

Again, in June, 1916, this Court recognized the characteristics of interurban electric railways particularly as to freight transportation in *Spokane & Inland Empire* v. *United States,* 214 U. S. 344. That decision mentioned interurban electric lines operating passenger trains of two or more cars, under standard railroad rules, and freight trains which did not operate over city streets.

Two cases have reached this Court in recent years involving the question of the characteristics of an interurban electric railway. In one case, *Piedmont & Northern* v. *Interstate Commerce Commission,* 286 U. S. 299, decided in May, 1932, the carrier was held not to be an interurban electric railway largely because of the fact that it was proposing to construct some one hundred twenty-five miles

of new railroad which would connect two sections of an existing line and thereby reach an entirely new connection with the steam railroads which would have the effect of raiding the business of the existing steam railroads, to the extent of 82,320 cars a year, including 12,300 cars of bridge traffic. This Court, in that case, went on to say:

> "* * * in view of the declared policy of the act, we cannot hold it an 'interurban' railway within the exemption * * *. The Transportation Act was remedial legislation, and should therefore be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended."

In another case which reached this Court in recent years on the question of interurban electric railway characteristics—*United States* v. *Chicago, North Shore & Milwaukee Railroad Co.*, 288 U. S. 1, this Court, in determining that the North Shore was an interurban electric railway and therefore exempted from the provisions of Section 20a of the Interstate Commerce Act, used the following language:

> "The facts differentiate the present case from *Piedmont & Northern Railway Co.* v. *Interstate Commerce Commission*, 286 U. S. 299. There the railway was predominantly a carrier of interchange carload freight, and *the proposed extension of line, which was the subject of that litigation, had as its object the creation of a link in a trunk line route composed of the electric line and a number of steam railroads, which would divert from other steam railroad trunk line routes some $4,000,000 of revenue annually.*" (Italics ours.)

Thus it will be seen that this Court in its *Piedmont & Northern* decision found that carrier not to be an inter-

urban electric railway largely because the construction of its new line would violate the "declared policy of the Act," with regard to the maintenance of a healthy national system of transportation. This *Piedmont & Northern* decision in no wise controverts the fact that interurban electric railways should be judged by their peculiar physical and operating characteristics. In that decision the Court made the declared policy of the Interstate Commerce Act with respect to the building of new lines a matter of paramount consideration in determining the right of the Piedmont & Northern to construct the line. The Court did not decide, in that case, that the question whether a particular electric line is an interurban electric line shall be determined by the relation of freight to passenger business.

It will thus be seen that, from their inception, interurban electric railways have possessed certain peculiar and outstanding physical and operating characteristics, which have been recognized by the Bureau of Census in official reports, by numerous State and Federal statutes, and by decisions of the various regulatory agencies, including the Interstate Commerce Commission. It was not until that Commission failed in its attempt to persuade Congress to adopt certain amendments to the Interstate Commerce Act with regard to interurban electric railways that any controversy arose concerning the characteristics of these railways.

In using the phrase "interurban electric railway" in the Electric Railway Mail Pay Act of 1918, in the amendments to the Interstate Commerce Act of 1920, in the Transportation Act, and later in the Railway Labor Act, Congress did not define its meaning. Therefore, under well settled canons of construction, it must be assumed that Congress used the phrase as descriptive of a class of independently operated electric railways, as that phrase and description had the sanction of time and common usage and a well un-

derstood meaning. Moreover, in the absence of any qualifying language, it must be assumed that Congress used the phrase in the sense that it had been used by the Interstate Commerce Commission, by the Bureau of Census, in State statutes and in decisions of this Court and of other courts. We have shown that over a long period of time prior to 1920 it was commonly recognized that interurban electric railroads were engaged to a very considerable extent in the transportation of freight in standard steam railroad equipment, and that such railways had joint freight rates and interchange facilities with steam railroads.

In the next section of this brief we shall undertake to show that the Interstate Commerce Commission has followed, during the past few years, a plan to accomplish by administrative construction, its recommended policy concerning these electric railways, which Congress has failed to adopt.

V

THE COMMISSION IS ATTEMPTING TO ESTABLISH BY ADMINISTRATIVE CONSTRUCTION ITS LEGISLATIVE RECOMMENDATIONS WITH REGARD TO INTERURBAN ELECTRIC RAILWAYS WHICH CONGRESS HAS FAILED TO ADOPT.

The Transportation Act, 1920, amended the Interstate Commerce Act quite extensively and in several sections excluded interurban electric railways from the provisions of such sections. It thereupon became the duty of the Interstate Commerce Commission, as a preliminary step in the enforcement of the sections of the act from which interurban electric railways are excluded, to determine what electric railways were included and which ones were excluded. The Commission's decisions in various cases be-

tween 1920 and 1926 indicate no confusion or misunderstanding in regard to the characteristics of interurban electric railways. *Michigan R. R. Co.* v. *Pere Marquette RR. Co., et al.*, 74 I. C. C. 496, decided November, 1922; *Application of Section 15a of the Interstate Commerce Act to Electric Railways*, 86 I. C. C. 751, decided in 1924; *Electric Railway Mail Pay Case*, 98 I. C. C. 737, decided in 1925; *Application of Section 15a to Interstate Public Service Company*, 117 I. C. C. 228, decided in 1926.

In none of the cited cases did the Commission raise any question about the generally well-understood characteristics of interurban electric railways.

Meanwhile, however, in its annual reports to Congress, which are required by law, the Commission, in the year 1921, began to make recommendations for legislation to amend the Interstate Commerce Act, to remove exemptions contained in that act as to interurban electric railways engaged in the general transportation of freight.

In its annual report to Congress dated December 1, 1921, the following will be found:

> "Under the law as it now stands, we have no jurisdiction over * * * (an) interurban electric railway which is not operated as a part of a general steam railroad system of transportation. Certain electric railways independently operated are engaged in the general transportation of freight in interstate commerce in addition to the transportation of passengers. * * * *Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. Under Section 15a of the act we are given authority to include in groups of carriers for rate making purposes such interurban electric lines as are engaged in the general transportation of freight.* It seems desirable that section 20a of the Interstate Commerce Act *be so amended as to indicate definitely*

the classes of electric railway companies subject to that section." (Italics ours.)

In its annual report to the Congress, dated December 1, 1922, the following language may be found:

> "Under the law as it now stands we have no jurisdiction over * * * (an) interurban electric railway which is not operated as a part of a general steam railroad system of transportation. * * * Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. *Unless such lines are held not to be street, suburban, or interurban electric railways they are not subject to our jurisdiction * * *. It is desirable that Section 20a of the Interstate Commerce Act be so amended as to also include explicitly electric railway companies engaged in the general transportation of freight.*" (Italics ours.)

So in December, 1922, after affirmatively stating that interurban electric railways are engaged in the general transportation of freight, and that some electric lines correspond substantially to steam roads, we find the Commission setting out the fact that unless such lines are held *not to be interurbans* that they are not subject to certain provisions of the Act. Following this is a specific recommendation asking Congress to amend the law to bring certain of these lines under the Commission's authority.

The Congress did not adopt the Commission's recommendations. No act was ever passed to comply with the Commission's conception of what was desired. On the other hand the Congress did adopt, after the year 1922, several statutes directly contrary to the Commission's recommendations, as will be hereinafter pointed out.

In 1923 and 1924 the Commission repeated its previous recommendations with regard to electric railways.

In 1925 the following significant recommendation is to be found:

> "*That section 20a* of the Interstate Commerce Act *be amended to include within its provisions* electric railway companies *engaged in the general transportation of freight.*" (Italics ours.)

This conclusively proves that at that time, in 1925, the Commission took the position that an electric railway company, even though engaged in the general transportation of freight, was excluded by the language of section 20a. It could *only have been considered as excluded because it was construed to be a "street, suburban or interurban electric railway" as only such electric railways were excluded by the provisions of that section.*

No specific recommendations were made in 1926 and 1927.

In 1928, however, a long statement was made by the Commission to Congress with regard to its jurisdiction over electric railways. After pointing out the various exclusion provisions of the Interstate Commerce Act, the Commission stated:

> "In the construction of these exclusion clauses great difficulty has been experienced, particularly in determining the roads properly classifiable as interurban electric railways. Practically all of the interurban electric lines of the country are engaged to a greater or less extent in the transportation of freight. * * * Certain electric railway lines for many years have engaged largely in freight transportation, their business being substantially the same as that of steam railroads, the only material difference being in motive power. *Where the functions of an electric line are substantially the same as those of an ordinary steam*

*railroad the public interest would seem to justify the exercise of our jurisdiction in the matters of securities, construction or abandonment, regulation of rates, recapture of excess earnings * * * to the same extent as in the case of steam railroads. * * * It is recommended that instead of attempting to define the classes of electric lines that are exempt from our jurisdiction under the several provisions in question, a general exemption of all electric lines be substituted, excepting such lines as interchange standard freight equipment with steam railroad lines and participate in through interstate freight rates with such lines."* (Italics ours.)

If the foregoing is not an admission by the Commission of its understanding of the legal meaning of the term "interurban electric railway" it is difficult to see what the Commission was attempting to do. Here is a specific statement of something that the Commission thought presented a real problem for the Congress to solve. It points the way that it would like to have the Congress act to accomplish the desired end, and that end is specifically set out to be the inclusion within the law of all interurban lines which interchange freight equipment with steam railroad lines and participate in through interstate freight rates with such lines.

Congress paid no attention to that recommendation. No act was passed at that time and none has ever been passed to make the Commission's recommendations effective; but several acts have been passed subsequent to 1928 in direct disregard of the Commission's suggestion.

The annual report of the Commission to Congress for the years 1929, 1930, 1931 and 1932 repeated the recommendations of the year 1928 set out above.

In the 1933 annual report, an interesting and significant statement is made with regard to the amendment that was passed by Congress in 1933 affecting section 19a of the

Interstate Commerce Act. Section 19a is the section which requires the Commission to make a valuation of all railroads subject to the act. As amended in 1933 the mandate of valuation with regard to interurban electric railways was removed and made a matter of discretion with the Commission.

This is what the Commission said in its 1933 annual report to Congress with regard to the amendment:

> "Paragraph (a) of Sec. 19a * * * formerly * * * directed us to value any street, suburban, or interurban electric railway * * *. Paragraph (a) as now amended leaves to our discretion the valuation of any such railway not operated as a part of a general steam railroad system of transportation."

The respondent has not been valued by the Commission and in fact no independently operated electric railway has been valued, since the mandate was removed. Unless these independently operated electric railways are interurban electric railways, the Commission has failed in its duty in not proceeding with their valuation. In other words, as to the valuation question, the Commission knows well enough what an interurban electric railway is and it has exercised its discretion with regard to them by not determining their value.

No recommendations were made by the Commission to Congress in 1934.

In 1935 again the Commission in its annual report discussed at considerable length the jurisdiction of the Commission over electric railways. It particularly referred to its previous recommendations with regard to clarifying amendments and specifically pointed out the action it took in finding that the Texas Electric Railway is not an interurban electric railway under the Railway Labor Act. The

Texas Electric Railway case was the first Railway Labor Act docket of the Interstate Commerce Commission and was decided March 16, 1925. That case is in litigation in the Federal District Courts and is standing still (awaiting a decision in this case) under a temporary injunction against the United States District Attorney for the Northern District of Texas, issued by the Federal District Court against the prosecution of that railway under the Railway Labor Act.

The respondent's case was the twelfth Railway Labor Act docket of the Commission and was decided in March, 1936.

In its 1935 annual report will be found the following significant language which seems conclusively to establish the fact that the Commission adopted its own suggestion made in the year 1922 for legislative amendment to the Interstate Commerce Act and in that manner, by administrative construction, proceeded to nullify the interurban electric railway exemptions. This is the language:

> "We renew our recommendation that the above provision of the act be clarified by appropriate amendment along the lines of our decision in *Texas Electric Railway*, 208 I. C. C. 193."

In other words, the Commission told Congress in that recommendation that it has, pursuant to a policy announced in the year 1922, proceeded to nullify by administrative construction, the provisions of various Federal acts and points specifically to its finding in 1935 in the *Texas Electric Railway Case*—sets out what its finding was—and then recommends that Congress pass a law approving the nullification. Congress did not pass the law.

It is interesting also to note at this point that in a series of findings affecting other electric lines some fifteen in

number, the Commission has cut the pattern of the finding the same as it started out with in the *Texas Electric Railway Case*. In line with its nullification policy, by administrative construction, it has held fourteen other electric railways *not* to be interurbans, and some of those lines, in addition to respondent and the Texas Electric, have sought relief from the unlawful action of the Commission in the Federal Courts. In one case only—that of the Chicago, North Shore & Milwaukee—the Commission found the line to be an interurban. But that finding was based largely upon the fact that the Supreme Court previously had so held.

In several cases in the Federal courts the Commission has been corrected in regard to its conception of an interurban electric railway, and, in fact, in no case arising under the Railway Labor Act has the Commission's finding been sustained. See *Hudson & Manhattan Ry. Co.* v. *Lamar Hardy, U. S. District Attorney,* 22 F. Supp. 105; *Texas Electric Railway Co.* v. *Clyde O. Eastus,* individually and as United States Attorney for the Northern District of Texas, No. 3662, unreported, temporary injunction granted; *Utah-Idaho Central* v. *Shields,* U. S. District Attorney, Federal District Court for District of Utah, Central Division, Equity No. 12924, unreported, decided October 15, 1936. Affirmed by United States Circuit Court of Appeals, Tenth Circuit, April 1, 1938. 95 F.(2d) 911.

As another illustration that in the year 1922 or 1923 the Commission had determined on the adoption of a policy of nullifying the legislative meaning of the phrase "interurban electric railway" in various Federal statutes, reference is made to the decision of the Commission in Ex Parte 38, the *Locomotive Inspection Case,* 122 I. C. C. 414. That case arose as the result of amendments to the Locomotive Inspection Act made by Congress in June, 1924.

The definition of the term "carriers" subject to the Locomotive Inspection Act as thus amended, was changed to exclude

> "street, suburban and interurban electric railways unless operated as a part of a general railroad system of transportation."

The word "steam" was omitted from the excluding language in the Locomotive Inspection Act. In September, 1926, that Act had been held by the Federal District Court to apply to electric as well as steam locomotives. *States Island Rapid Transit R. Co.* v. *Pub. Serv. Comm.*, 16 F.(2d) 313.

After an ex parte hearing concerning the application of the excluding language to interurban electric railroads, the Commission made a report in which it said:

> "In none of the acts mentioned, and in no other act with which we are familiar, has Congress used an expression identical with that used in the excluding clause of the Locomotive Inspection Act." 122 I. C. C. 414, 420.

It will thus be seen that in construing the excluding phrase in the Locomotive Inspection Act, the Commission was itself conscious of the fact that its decision should not be regarded as a precedent in determining the meaning of somewhat similar excluding language in other federal statutes. Moreover, it is well settled that laws designed to promote safety will be construed liberally so as to carry out the intent and purpose of Congress. Therefore the fact that in the *Locomotive Inspection Case* the Commission held that certain electric railways were not interurban electric railways, cannot fairly be regarded as a precedent.

In this connection it is interesting to note that late in 1926 the Commission decided that the Interstate Public Service Company was an interurban electric railway not engaged in general transportation of freight and was, therefore, not subject to section 15a of the Interstate Commerce Act, 117 I. C. C. 228, and that within three months from the date of that decision the Commission held in the *Locomotive Inspection Case* that that railroad was not an interurban electric railway. It is also appropriate to point out that one of the electric railways which the Commission held not to be an interurban electric railway and therefore, subject to the Locomotive Inspection Act, was held by this Court to be an interurban electric railway in *United States* v. *Chicago, North Shore & Milwaukee R. Co.*, 288 U. S. 1.

As we have already shown, in recent years there has been no consistency by the Commission in determining the meaning of the phrase "interurban electric railway" as used in various statutes. In 1929 the Commission held that the Cincinnati & Lake Erie Railroad was an interurban electric railway excluded from section 1(22) and section 20a of the Interstate Commerce Act, 154 I. C. C. 603. In August, 1938, the Commission (Commissioner Porter dissenting) held that this railroad is not an interurban electric railway and is therefore subject to the Railroad Retirement Act and the Carriers' Taxing Act, despite the fact that there was no substantial change in the operation or physical characteristics of that carrier since 1929. In November, 1931, the Commission held the Youngstown & Suburban Railway to be an interurban electric railway excluded from section 1(22) of the Interstate Commerce Act, 175 I. C. C. 699. In August, 1938, in 227 I. C. C. 73, the Commission (Commissioner Eastman dissenting) held that the same railway, which had substantially the same physical and operating characteristics, was not an interurban electric railway.

VI

DECISION OF THE UNITED STATES RAILROAD LABOR BOARD, DECEMBER, 1920

The Transportation Act, 1920, in Title III thereof, set up the first United States Railroad Labor Board which had jurisdiction over the settlement of disputes between carriers and their employees. Interurban electric railways were excluded from the original Railroad Labor Board Act in said year, 1920, in the following language:

> "* * * except a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation."

Shortly after the passage of the Railroad Labor Act as part of the Transportation Act, 1920, a complaint was brought by union labor with regard to the status of interurban electric railways under the quoted exclusion language. In a decision rendered under date of December 11, 1920, Decision No. 33 (Docket 26-A), the Labor Board, without a dissenting voice, used the following language:

> "It is plain that Congress has dealt in discriminating language with interurban electric railways throughout the Interstate Commerce Act and the Transportation Act, 1920, and has consistently treated them differently from steam lines. Congress has done this because there is a material difference, generally speaking, between steam and electric roads in the matter of equipment, nature of service, and standards of employment. With a few exceptions, one service is general, the other is local. The difficulty is that a few electric railways have developed far beyond the original idea of an interurban. They have now come to rival many steam lines in service and size. And still

the definition of what is an interurban has likewise broadened, not only by popular conception, but by legal, statutory and executive decree, so that the Pacific Electric Railway Company operating upward of six hundred (600) miles of road, the Fort Dodge, Des Moines & Southern Railroad owning two thousand four hundred (2,400) box and coal cars, and the Spokane & Inland Empire Railroad Company, crossing State lines and operating passenger and freight trains, are all judicially labeled 'interurban'. It is difficult, if not impossible, to get away from this definition. All the respondents are electrically operated. Some have been judicially determined to be interurban; the remainder either are so similar in character that they cannot be successfully differentiated, or are otherwise clearly excluded by the words of the Act. Neither are the respondents operating as a part of any general steam railroad system of transportation. Therefore, the Labor Board must decide that it has no jurisdiction over any of these respondents, and it herewith dismisses the applications of the petitioners for further hearing."

No appeal to the courts was ever taken from that decision of the Labor Board in 1920 and when the Railroad Labor Act was repealed and the Railway Labor Act of 1926 was enacted in lieu thereof, the following exclusion language was adopted:

"* * * the term 'carrier' shall not include any street, interurban, or suburban electric railway unless such a railway is operating as a part of a general steam railroad system of transportation, but shall not exclude any part of the general steam railroad system of transportation now or hereafter operated by any other motive power."

It is a well-settled rule of construction that where an administrative interpretation of a statute exists at the time of its re-enactment in the same terms, Congress is presumed to have intended to adopt the administrative interpretation. (*National Lead Co.* v. *U. S.*, 40 S. Ct. 237; *McCaughn* v. *Hershey Chocolate Co.*, 51 S. Ct. 510, *Johnson* v. *Manhattan Railway Company*, 53 S. Ct. 721.

This rule is directly in point in this case, first because the 1920 Railroad Labor Statute was repealed and re-enacted in substantially the same language in 1926 and the exclusion language was identical except added language put in for the purpose of clarification.

Furthermore, when the 1926 Railway Labor Act was under consideration by Congress, the fact that the Railroad Labor Board had construed the exclusion language in 1920, was brought directly to the attention of the Committee, in open hearing. As finally adopted, the exclusion language of the 1926 act remained the same as it had been in the 1920 act. Therefore, Congress by re-enacting the statute, adopted the construction placed upon the prior statute by the Railroad Labor Board in 1920. (Hearings before Committee on Interstate and Foreign Commerce, House of Representatives, 69th Congress, 1st Session, on H. R. 7180, pages 24-34, pages 61-63.

The Railway Labor Act of 1926 was amended by the Act of June 21, 1934, which is the law governing the settlement of disputes between carriers and their employees at the present time. The exclusion language of the present act is:

> "* * * the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of trans-

portation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

It will be noted that the exclusion language itself is identical with the exclusion language of the 1926 Act and is no different in meaning than the exclusion language of the 1920 Act. The only addition is the proviso contained in the 1934 Act with regard to the function of the Interstate Commerce Commission.

The original Railroad Labor Board decision in December, 1920, stood through the entire life of the Railroad Labor Board, from 1920 to 1926. It stood through the entire life of the Board of Mediation, created by the act of 1926, to 1934. In other words, the decision of the Railroad Labor Board in 1920 held through and was uncontested for a period of fourteen years, and during the intervening time the Congress, with particular notice to it in regard to the matter, had re-enacted the statute in 1926 and again in 1934 upon the basis of the 1920 decision.

So in the year 1935—fifteen years after the first Railroad Labor Act, excluding interurban electric railways, was enacted—despite the fact that the Railroad Labor Board in a formal decision in 1920 construed the term "interurban electric railway" and despite the fact that Congress re-enacted the statute in 1926 and 1934, and thus adopted the Labor Board decision—the Commission brushed aside the precedent and made a finding designed to support a policy of nullification of the law by administrative construction.

VII

THE COURTS HAVE JURISDICTION TO MAKE A DE NOVO DETERMINATION OF THE STATUS OF RESPONDENT UNDER THE RAILWAY LABOR ACT.

As already pointed out in the fore-part of this brief, the Interstate Commerce Commission, upon request of the Mediation Board and after hearing determined that the respondent is not an interurban electric railway.

Section 2, Tenth, of the Railway Labor Act declares that the wilful failure or refusal of any carrier or its officers to comply with the terms of certain provisions of that act shall constitute a misdemeanor and, on conviction, shall subject the carrier or its officer, etc., to a fine of not less than $1,000 or more than $20,000, or imprisonment for not more than six months, or both fine and imprisonment for each offense, and each day shall constitute a separate offense.

The bill of complaint alleges, and sets out facts to show that respondent is and always has been an interurban electric railway not operated as a part of a general steam railroad system of transportation, is not subject to the provisions of the Railway Labor Act, and for that reason has not complied with such provisions. The petitioner herein who was defendant in the lower court, answered the complaint and admitted that it is his duty to enforce the fines and penalties provided by the Act for non-compliance with its provisions and that he would proceed to do so against the respondent unless restrained by the Court. The Court of first instance heard the parties on respondent's application for a temporary injunction, as the result of which an injunction was issued by that Court and a final decree entered which was sustained by the Court of Appeals. The

Bill of Complaint as amended also alleged that if respondent is subject to the Railway Labor Act certain provisions of that act violated the 5th and 7th amendments of the Constitution of the United States and that the finding made by the Interstate Commerce Commission, that respondent is not an interurban electric railway is neither binding nor conclusive on the Court for the reason that the Court not only has jurisdiction to make an independent decision of the question involved, but, in any event, is required by the issues raised in the pleadings to make an independent decision of the question, in order to determine whether it should consider the constitutional objections which respondent has made to the statute.

In other words, if this Court should conclude that the Court below must consider the report and findings made by the Interstate Commerce Commission as well as the evidence on which the Commission acted, which the Court below in fact did, the position of the respondent is that the finding of the Commission is arbitrary and capricious in that it is contrary to the law, is not based on evidence and is contrary to the evidence. However, in view of the decision of the Court in *Shannahan, Trustee,* v. *United States,* 58 S. Ct. 782, involving the status of the Chicago, South Shore & South Bend Railway, it is clear that the Courts below did not err in considering the questions involved *de novo* and in making an independent determination of them.

The following points must be considered and must be decided by the Court before it reaches the constitutional questions:

1. By the proviso in Section 1, First, of the Railway Labor Act, did Congress confer on the Interstate Commerce Commission the exclusive authority to determine whether a particular electric railway is an

interurban electric railway not operated as a part of a general steam railroad system of transportation?

2. If the authority of the Commission is not exclusive or final, did the Courts below have the right and the authority to consider and decide *de novo* the question whether the respondent is an interurban electric railway not operated as a part of a general steam railroad system of transportation, or must the Courts consider and determine whether the decision of the Commission is valid and according to law, or is arbitrary and contrary to the evidence and contrary to the law, etc?

3. In view of the constitutional questions raised by the bill of complaint as amended, the Courts below were bound to consider and determine *de novo* whether the respondent is an interurban electric railway, in order to decide the right of the respondent to raise such questions.

These points will be discussed in the order stated.

Points 1 and 2 are related and will be discussed together. The phrase in the proviso of Section 1, First, of the Railway Labor Act, to the effect that the terms of that Act shall not include "any street, interurban or suburban electric railway, unless such railway is operating as a part of a general steam railroad system of transportation" is substantially the same in language as similar phrases in Section 1(22), in Section 20a of the Interstate Commerce Act, in the Locomotive Inspection Act, in the Railroad Retirement Act, in the Carriers Taxing Act, and in other acts of Congress.

This suit is neither a direct nor a collateral attack on the determination made by the Commission as to the status of the respondent under the Railway Labor Act. That act contains no provision for judicial review. That fact does not deprive respondent of the right of a judicial review on the

questions involved which, in effect, call for decision as to whether respondent falls within the Railway Labor Act as determined by the Commission or the National Labor Relations Act. *Ohio Valley Co.* v. *Ben Avon*, 253 U. S. 287. Respondent could have maintained this suit against petitioner Shields, even if the Commission had not made the determination, if Shields had threatened to prosecute respondent for non-compliance with the provisions of the Railway Labor Act. The reference to the determination by the Commission in the court of first instance was brought in by the answer of petitioner, Shields, and the Commission as an intervener.

Petitioners are in an anomalous position. On the one hand they concede, as they must under *Shannahan* v. *United States*, 303 U. S. 596, that the determination by the Commission under the Railway Labor Act may not be directly attacked under the Urgent Deficiencies Act. On the other hand petitioners insist that, because the proviso in the Railway Labor Act authorizes the Commission to determine, upon an appropriate request or complaint of an interested party, after hearing, whether a particular electric line falls within the exemption, the action of the Commission, when made, is exclusive and binding on the courts, and that the function of the Commission in making such a determination differs from its function under almost identical language in various sections of the Interstate Commerce Act and the Transportation Act, for the reason, as petitioners say, that the latter acts do not in terms authorize the Commission to make the determination. This is a distinction without a difference. The fact that the provisions of the Interstate Commerce Act and certain other related acts which exclude interurban electric railways do not, in terms, authorize the Commission to decide such question is unimportant and immaterial because the authority to do so

under those acts is there by necessary implication. This was clearly recognized by this Court in *United States* v. *C. N. S. & M. R. Co.*, 288 U. S. 1, where the Court said:

> "The primary responsibility rested upon the Commission to determine whether under the circumstances the railroad was required to procure leave under section 20 (a) for the issuance of securities".

In either event the question whether an electric line is an interurban electric railway is a mixed question of law and fact which may be determined by the courts *de novo*. *United States* v. *State of Idaho*, 298 U. S. 105; *United States* v. *C. N. S. & M. R. Co.*, 288 U. S. 1; *Texas & Pacific R. Co.* v. *G. C. & S. F. R. Co.*, 270 U. S. 266; *Piedmont & Northern R. Co.* v. *I. C. C.*, 286 U. S. 299; and *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285. *Tap Line Cases*, 234 U. S. 1.

The function of the Commission under the Railway Labor Act is in all essential respects similar to its function under the Valuation Act. Under either act its determination is no more binding on the Court than was the action of the Commission in *Shannahan, Trustee* v. *United States*, 303 U. S. 596; *United States* v. *Los Angeles & S. L. R. R.*, 273 U. S. 299; *United States* v. *A. B. & C. Ry. Co.*, 282 U. S. 522; *Great Northern* v. *United States*, 277 U. S. 172; and *Piedmont & Northern Rwy. Co.* v. *United States*, 280 U. S. 469.

Petitioners say that by delegating to the Commission in the Railway Labor Act, the Railroad Retirement Act, and the Carriers' Taxing Act the authority, under the circumstances described in those acts, to determine the status of an electric railway, indicates that Congress has abandoned the attempt made in the Bankruptcy Act of 1933 and sev-

eral sections of the Transportation Act "at exact definition, and has left the question to the Interstate Commerce Commission to decide, * * * with knowledge of the manner in which the Commission had decided similar questions in the past." Petitioners are entirely wrong in this contention. In the Fair Labor Standards Act of 1938, Section 13(a), Congress excludes from the terms of that act employes of a street, surburban or interurban electric railway, and it did not in that act confer on the Interstate Commerce Commission authority to make the determination. This contention by petitioners also loses sight of the fact that Section 77 of the Bankruptcy Act, as amended in August, 1935, contains the same definition as was included in that section of the Bankruptcy Act of 1933, which, as elsewhere pointed out, excludes from the term "railroad" an interurban electric railway which is not operated as a part of a general steam railroad system, or which does not derive more than 50 per cent of its operating revenue from the transportation of freight in standard steam railroad equipment, thus clearly recognizing that an electric line may be an interurban electric railway, even though it derives most of its revenue from freight transported in standard railroad equipment.

Petitioners repeatedly refer to the decision of the Commission in the *Locomotive Inspection Act Case*, 122 I. C. C. 414, for the purpose of emphasizing that in that case the Commission held that the respondent was not an interurban electric railway under that act. The Commission also held that the Chicago, North Shore & Milwaukee Railroad Company was not an interurban electric railway company under that act, and then, a few years later it held that the North Shore is an interurban electric railway excluded from the provisions of the Railway Labor Act, 219 I. C. C. 135. And, as has already been shown, this Court made a

like finding in *United States* v. *C. N. S. & M. R. Co.*, 288 U. S. 1. Other inconsistent findings by the Commission in respect to the status of the Cincinnati & Lake Erie Railway, the Interstate Public Service Company, the Youngstown & Suburban Railroad and other carriers have been referred to earlier in this brief.

Petitioners insist that Congress was aware of the effect of permitting the Commission to make decisions which would determine the status of electric railways under the Railway Labor Act because of certain statements made by interested persons before congressional committees. Specifically, petitioners say that such a delegation of authority was supported before the committee considering the bill by George M. Harrison, representing railroad employees' organizations, and was opposed by C. D. Cass, one of counsel for *amicus curiae*. These statements are true but are here unimportant, because under the doctrine of *Duplex Printing Press* v. *Deering*, 254 U. S. 443, and other cases, the rule is that statements made before a committee of Congress are not admissible as an aid to the interpretation of a statute which is doubtful or obscure.

Petitioners also rely on *I. C. C.* v. *Union Pacific R. Co.*, 222 U. S. 541; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457; *Florida* v. *United States*, 292 U. S. 1; *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314; *Mississippi Valley Barge Co.* v. *United States*, 292 U. S. 282, and other cases, as authority for the proposition that a determination by the Commission under the Railway Labor Act is binding on the courts, at least if supported by substantial evidence, and is neither arbitrary nor capricious. These cases deal with orders of the Commission where it exercised administrative authority in respect to rates, regulations and practices. It is, of course, settled that where a tribunal like the Commission exercises that

character of authority its orders will be sustained by the courts, if supported by substantial evidence, unless contrary to law, arbitrary, etc. But these decisions are inapplicable to the question involved because whether a particular carrier is an interurban electric carrier or, for that matter is a common carrier, is not an administrative but is a judicial question. *Tap Line Cases*, 234 U. S. 1; *United States* v. *State of Idaho*, 298 U. S. 105; *Texas & Pacific* v. *G. C. & S. F. Ry. Co.*, 270 U. S. 266; *Piedmont & Northern R. Co.* v. *I. C. C.*, 280 U. S. 249; *United States* v. *C. N. S. & M. R. Co.*, 288 U. S. 1.

In the Idaho case an application was filed with the Commission by the railroad for a certificate to abandon certain tracks. Spur, industrial, switching or side tracks are excluded from the provisions of Section 1(22) of the Interstate Commerce Act. Although it was urged before the Commission in that case that the tracks there sought to be abandoned were spur, industrial, switching or side tracks, the Commission held to the contrary, assumed jurisdiction and issued the certificate. Whereupon the State of Idaho brought a suit against the United States under the Urgent Deficiencies Act in a three judge Court. Both the Government and the Commission contended in that suit, as petitioners contend here, that as the order of the Commission was based on evidence and was not shown to be arbitrary, the Court was bound to sustain it. This Court rejected that contention, and, as already pointed out, held that whether the tracks were spur, side or switching tracks was a mixed question of law and fact, left by Congress to the decision of a court. It then proceeded to find that the tracks were spur, or industrial tracks, not within the jurisdiction of the Commission. The Court also intimated in that case that the suit by the State of Idaho could have been maintained in a single judge court, and that in the

circumstances it was not necessary that a direct attack on the order of the Commission be made as was done in another judge court.

It requires no argument to show that there is no difference in principle between the function of determining whether a particular track is a spur track, and the function of determining whether a particular railroad is an interurban electric railroad.

In *Powell, et al.*, v. *United States*, 300 U. S. 276, the Court held that the question whether a particular extension of a railroad was within or without the excluding language of Section 1(22) of the Interstate Commerce Act is for a court to decide; that it is the function of the court to construe that paragraph; and that the only function of the Commission under the paragraph is to determine whether the proposed extension, if covered by the paragraph, is in the public interest. The court, of course, recognized as it had before, that the Commission may determine the meaning of that paragraph as an incident to its determination of its jurisdiction.

It is therefore clear that as the Railway Labor Act excludes from its provisions interurban electric railways not operated as a part of a general steam railroad system, the question whether a particular electric railroad is an interurban electric railroad within the meaning of the excluding language of that Act is a mixed question of law and fact, just as it is where similar excluding language is used in provisions of the Interstate Commerce Act, and, to the extent that it involves a question of fact, it is a jurisdictional fact which under the doctrine of *Crowell* v. *Benson*, 52 S. Ct. 285, 297, and *St. Joseph Stock Yards Co.* v. *U. S.*, 298 U. S. 38, 74-75, the Courts have the right to determine *de novo*. In *Crowell* v. *Benson* the Court had this to say on that subject:

"In the absence of any provision as to the finality of the determination by the deputy commissioner of the jurisdictional fact of employment, the statute is open to the construction that the court in determining whether a compensation order is in accordance with law may determine the fact of employment which underlies the operation of the statute."

The Railway Labor Act confers no administrative authority on the Interstate Commerce Commission. Its authority under that act to determine the status of an electric line exists only, if and when the Mediation Board requests it to do so, or when a complaint of an interested party is filed with the Commission. In the circumstances, it is obvious that the mere delegation to the Commission of the authority to do certain things under the Railway Labor Act, if and when certain machinery is put in motion, does not make its decision any more exclusive or final under that Act than is its decision on a similar question to determine its jurisdiction with respect to certain electric lines under the provisions of the Interstate Commerce Act where similar language is used.

There is nothing in the proviso of Section 1 of the Railway Labor Act which indicates any intention on the part of Congress to make the determination by the Commission in a particular case exclusive or final. When Congress intends to delegate final authority to an administrative agency with respect to a particular subject it shows that intention in plain language. For example, in Section 10(a) of the National Labor Relations Act, where the board created by that act is authorized to do certain things, Congress provided:

"This power shall be exclusive and shall not be affected by any other means of adjustment or prevention

that has been or may be established by agreement, code, law or otherwise."

Shamahan, Trustee. v. *U. S.*, 303 U. S. 596, was a suit brought against the United States under the Urgent Deficiencies Act in a three judge court to enjoin and set aside the determination made by the Interstate Commerce Commission of the status of the Chicago, South Shore & South Bend Railroad, under the very provisions of the Railway Labor Act which are here considered. That suit was based on the theory that the determination by the Commission was an order which had to be attacked directly in a suit under the Urgent Deficiencies Act. The Court held that the determination by the Commission under the Railway Labor Act was not an order, and in doing so made the following significant statement:

> "First. The function of the Commission is limited to the determination of a fact. Its decision is not even in form an order. It 'had no characteristic of an order, affirmative or negative'. *United States* v. *Illinois Cent. Ry.*, 244 U. S. 82, 89; *United States* v. *Atlanta, B. & C. Ry.*, 282 U. S. 522, 527-528. Compare *Lehigh Valley R. R.* v. *United States*, 243 U. S. 412, 414. But even if this difficulty is overlooked, others are insuperable. The decision neither commands nor directs anything to be done. 'It was merely preparation for possible action in some proceeding which may be instituted in the future.' *United States* v. *Los Angeles & S. L. R. R.*, 273 U. S. 299, 310."

As this Court has already decided that a determination by the Commission under the Railway Labor Act neither commands or directs anything to be done, but "is mere preparation for possible future action" it certainly cannot be said that a determination by the Commission under that

act is final or exclusive, or that it prevents a court from considering and deciding *de novo* the question whether a particular electric line is or is not an interurban electric line excluded from the provisions of that act.

3. As has already been pointed out, the bill of complaint as amended alleges that certain of the provisions of the Railway Labor Act violated the Fifth and Seventh Amendments to the Constitution. It is, therefore, apparent that irrespective of the points made in the preceding paragraphs the Court must determine under the pleadings as they stand whether the respondent is or is not an interurban electric railway in order for the court to reach the point of considering the constitutional objections. In other words, if as alleged in the bill of complaint the respondent is an interurban electric railway, and the court sustains the decisions of the courts below, then the Court need not consider the constitutional questions. In these circumstances, under any view that may be taken of the jurisdictional question which has been discussed, it is clear that the Court is required to decide the basic question whether or not the respondent is or is not an interurban electric railway as that phrase is used in the Railway Labor Act.

The decisions of the courts below are correct both on the jurisdictional question and on the merits. It has already been shown that the courts below had authority and jurisdiction to consider and determine *de novo* the questions involved.

The courts below were also correct in their decisions on the merits because the facts before the court show beyond question that the respondent is now, and always has been, an interurban electric railway not operating as a part of a general steam railroad system of transportation, and therefore is excluded from the provisions of the Railway Labor Act.

The courts below have given the term "interurban electric railway," as used in the Railway Labor Act its plain, natural and lawful meaning. On the other hand, as we have already shown, the Interstate Commerce Commission has disregarded the plain, natural and lawful meaning of this term and has used an unlawful and unwarranted standard by which to decide the question.

VIII

CONCLUSION

In its zeal to force the establishment of its policy in regard to interurban electric railways, despite the fact that, for fifteen years, Congress has ignored the Commission's legislative recommendations in respect thereof, and despite the further fact that meanwhile Congress has adopted statutes emphasizing a much broader legal meaning of the term than the Commission's construction (Section 77 of the Bankruptcy Act, 1935), the Commission has obviously, in pursuing its nullification policy given little if any consideration to the catastrophic effect of its interpretation of the term upon the respondent and upon electric railway carriers generally.

Here are electric railway carriers, the respondent, as well as a large class of such carriers, which for many years have been commonly known as and considered by themselves and others to be interurban electric railways, exempted from the provisions of numerous State and Federal statutes (Appendix B and Appendix C). Suddenly, without substantial change in their physical and operating characteristics, they are advised that they are no longer interurbans and that the exemptions do not apply. The results are menacing, indeed.

If this respondent and that class of electric carriers are not interurban electric railways then for a great many years they have been in open and flagrant violation of a multiplicity of State and Federal laws. Their State and municipal franchises authorizing interurban electric railway operations are void. Their right to conduct an interurban electric railway business, when their charters so authorize, is nullified. Any securities they may have issued without the Commission's approval are invalid and their officers and agents are subject to drastic penalties. Any extensions or abandonment of lines which they may have made without the Commission's certificate of convenience and necessity have been unlawful. Their non-compliance with the Adamson Eight-Hour Law has been illegal. Their non-compliance with the two former Railroad Labor Acts for fifteen years, and the construction placed upon those statutes by the two former Railroad Labor Boards, were unlawful. Their special treatment as interurban electric railways under State laws by numerous decisions of State courts will be subject to reversal. Their payment of tax under the Social Security Act instead of under the Carriers Taxing Act are illegal. Their submission to the National Labor Relations Act instead of the Railway Labor Act is illegal. These and many other unanticipated ramifications may ensue from a failure to sustain the lower courts in this case.

Resting securely for many years in the belief that it is an interurban electric railway, the respondent in this case, and other electric carriers of the same class, in good faith, have depended upon the various exemptions in the law.

Truly, if this Court should hold that the Interstate Commerce Commission has unbridled power under the proviso of section 1, First, of the Railway Labor Act, to impose with all finality, its construction of the meaning of the term "interurban electric railway", a Pandora's box of ills will

be opened for these carriers, the result of which will be catastrophic beyond measure.

Respectfully submitted,

ROBERT E. QUIRK,
CLAUDE D. CASS,
Counsel for Amicus Curiae.

October 10, 1938.

APPENDIX A

Electric Railway Companies, Engaged in Interstate Commerce to Some Extent, Which Are Members of The American Transit Association.

Atlantic City & Shore Railroad Company	New Jersey
Bamberger Electric Railroad Company	Utah
Cedar Rapids & Iowa City Railway	Iowa
Chicago, North Shore & Milwaukee Railroad Company	Illinois
Chicago, South Shore & South Bend Railroad	Indiana
Cincinnati & Lake Erie Railroad Company	Pennsylvania
Cincinnati, Newport & Covington Railway Company	Kentucky
Co-Operative Transit Company	West Virginia
Dayton-Xenia Railway Company	Ohio
Delaware Electric Power Company	Delaware
Denver & Intermountain Railroad Company	Colorado
East Bay Transit Company	California
Fonda, Johnstown & Gloversville Railroad Company	New York
Fresno Traction Company	California
Indiana Service Corporation	Indiana
International Railway Company	New York
Kansas City Public Service Company	Missouri
Key System	California
Lackawanna & Wyoming Valley Railroad Company	Pennsylvania
Lehigh Valley Transit Company	Pennsylvania
Milwaukee Electric Railway & Light Company	Wisconsin
Northern States Power Company	Minnesota
Oakland Terminal Railroad Company	California
Ohio Public Service Company	Ohio
Pacific Electric Railway Company	California

Petaluma & Santa Rosa Railroad Company	California
Philadelphia & Western Railway Company	Pennsylvania
Potomac Edison Company	Maryland
Salt Lake & Utah Railroad Corporation	Utah
South Brooklyn Railway	New York
Steubenville, East Liverpool & Beaver Valley Traction Co.	Ohio
St. Louis & Belleville Electric Railway Company	Illinois
Texas Electric Railway	Texas
Waterloo, Cedar Falls & Northern Railway Company	Iowa
Utah-Idaho Central Railroad Company	Utah
York Utilities Company	Maine

APPENDIX B

Sections of Federal Statutes Specifically Mentioning or Exempting Interurban Electric Railways

RAILWAY LABOR ACT (1934)

APPROVED JUNE 21, 1934

Section 1, First.

"*Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

* * * * * *

(For the convenience of the Court the Railroad Labor Acts of 1920 and 1926, which were superseded by the above Railway Labor Act of 1934 are also quoted)

* * * * * *

RAILROAD LABOR ACT (1920)

APPROVED FEBRUARY 28, 1920

Section 300—Sub-section 1

"The term 'carrier' includes * * *, any carrier by railroad, subject to the Interstate Commerce Act, except a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation."

RAILROAD LABOR ACT (1926)

APPROVED MAY 20, 1926

Section 1, First

"*Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway unless such a railway is operating as a part of a general steam railroad system of transportation, but shall not exclude any part of the general steam railroad system of transportation now or hereafter operated by any other motive power."

* * * * * *

INTERSTATE COMMERCE ACT

PART I

AMENDMENT TO SECTION 15(3)

APPROVED JUNE 18, 1910

AS SLIGHTLY MODIFIED IN 1920, BUT NOT CHANGED AS TO ELECTRIC RAILWAYS

"The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character;"

* * * * * *

ADAMSON EIGHT-HOUR ACT

APPROVED SEPTEMBER 5, 1916

Section 65.

"Eight hours shall, * * *, be deemed a day's work * * * for the purpose of reckoning the compensation

for services of all employees who are now or may hereafter be employed by any common carrier by railroad, except * * *, electric street railroads and electric interurban railroads,"

* * * * * *

FEDERAL CONTROL ACT

APPROVED MARCH 21, 1918

From Section 1.

"*Provided, however,* That nothing in this paragraph shall be construed as including any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic, or sale of power, heat and light, or both."

* * * * * *

RAILWAY MAIL SERVICE PAY ON URBAN AND INTERURBAN ELECTRIC RAILWAYS ACT

APPROVED JULY 2, 1918

Section 570.

"The Interstate Commerce Commission is empowered and directed to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of mail matter by urban and interurban electric railway common carriers * * *."

* * * * * *

INTERSTATE COMMERCE ACT

PART I

SECTION 1 (22)

APPROVED FEBRUARY 28, 1920

"The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not

extend to the construction or abandonment * * * of street, suburban, or interurban electric railways which are not operated as a part or parts of a general steam railroad system of transportation."

* * * * * * *

INTERSTATE COMMERCE ACT
PART I

SECTION 15A

APPROVED FEBRUARY 28, 1920
AMENDED JUNE 16, 1933

(The following language is not now in the section)

"* * *; the term 'carrier' means a carrier by railroad * * *, excluding * * *, (b) street or suburban electric railways unless operated as a part of a general steam railroad system of transportation, (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation or engaged in the general transportation of freight * * *"

* * * * * * *

INTERSTATE COMMERCE ACT
PART I

SECTION 20A

APPROVED FEBRUARY 28, 1920

"* * * the term 'carrier' means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) * * *"

TRANSPORTATION ACT, 1920

APPROVED FEBRUARY 28, 1920

Section 204.

"The term 'carrier' means a carrier by railroad * * *; but does not include any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both;"

* * * * * * *

TRANSPORTATION ACT, 1920

APPROVED FEBRUARY 28, 1920

Section 209.

"The term 'carrier' means (1) a carrier by railroad * * *; but does not include a street or interurban electric railway * * *, which has as its principal source of operating revenue, urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both;"

* * * * * * *

LOCOMOTIVE INSPECTION ACT

AS AMENDED

APPROVED JUNE 7, 1924

Section 22.

"* * *, the terms 'carrier' and 'common carrier' mean a common carrier by railroad, * * *, excluding street, suburban, and interurban electric railways un-

less operated as a part of a general railroad system of transportation."

* * * * * * *

BANKRUPTCY ACT

AS AMENDED

SECTION 77 (R)

AS APPROVED MARCH 3, 1933

"The term 'railroad corporation' * * * means any common carrier by railroad * * *, except a street, suburban or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment."

* * * * * * *

INTERSTATE COMMERCE ACT
PART I

SECTION 19(A) AS AMENDED

APPROVED JUNE 16, 1933

"That the Commission shall, * * *, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, except any street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this part whenever in its judgment such action is desirable in the public interest."

BANKRUPTCY ACT

AS AMENDED

SECTION 77 (M)

AS APPROVED AUGUST 27, 1935

"The term 'railroad corporation' * * * means any common carrier by railroad * * *, except a street, a suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment."

* * * * * * *

RAILROAD RETIREMENT ACT OF 1937

AS APPROVED JUNE 24, 1937

Section 1(a)

"*Provided, however,* That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

* * * * * * *

CARRIERS TAXING ACT OF 1937

APPROVED JUNE 29, 1937

Section 1(a)

"*Provided, however,* That the term 'employer' shall not include any street, interurban, or suburban elec-

tric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

* * * * * * *

INTERSTATE COMMERCE ACT
PART I

SECTION 26

APPROVED AUGUST 26, 1937
(BLOCK SIGNALS)

Section 26(a)

"*Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway unless such railway is operated as a part of a general steam-railroad system of transportation, but shall not exclude any part of a general steam-railroad system of transportation now or hereafter operated by any other motive power."

* * * * * * *

FAIR LABOR STANDARDS ACT OF 1938
APPROVED JUNE 25, 1938

Section 13(a)

"The provisions of sections 6 and 7 shall not apply with respect to * * *; or (9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section;"

Section 1(a)

"*Provided, however*, That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso."

APPENDIX C

Some State Statutes Relating to Interurban Electric Railways

(NOT INTENDED TO BE EXHAUSTIVE)

"The term 'railroad' when used in this Act includes every commercial, interurban and other railway other than a street railroad * * *."

(Chap. 896, Revised Statutes of California.)

"The term 'interurban railroad' as used in this Act shall be construed to mean any railroad, except a street railroad, which uses electricity as a motive power."

(Indiana Statutes Acts 1921, Chap. 224.)

"All interurban electric railroad companies authorized to construct a railroad ten or more miles in length * * * shall be under the same duties and responsibilities * * * and shall have the same rights, powers

and privileges * * * conferred upon railroad corporations."

(Kentucky Statutes, Sec. 842a-1.)

"The term 'railroad' * * * includes every commercial, interurban, or other railway other than a street railroad * * *."

(Revised Statutes of Maine, Chap. 62, Sec. 15.)

"* * * the Commission may * * * require steam railroads and interurban and suburban railroads to interchange cars * * *. and interurban railroads may be used for handling freight in carload lots in steam railroad freight cars * * *."

(Michigan Statutes, Chap. 208, Sec. 22, 26.)

"The term 'interurban railway' as used in this Act shall * * * mean a railway operated by electricity for the carriage of passengers, freight, mail and express between two or more municipalities * * * upon a private right of way or partly upon a private right of way and partly upon a public way."

(Compiled Statutes of Nebraska, Sec. 74-1201.)

"When engaged in the business of operating a railroad * * * whether constructed upon the public highway or upon private rights of way * * * using electricity or other motive power than animal or steam power for the transportation of passengers, packages, express matter, United States mail, baggage and freight, is an interurban railroad company and included in the term 'railroad' * * *."

(Ohio Code, Sec. 614-2.)

"Any railway operated upon the streets of a city or town by electric or other power than steam, which extends beyond the corporate limits of such city and town to another city, town or village * * *, shall be known as an interurban railway * * *."

(Section 2033a, Iowa Statutes.)